

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO
MINUTE SHEET
BEFORE THE HONORABLE JUDITH C. HERRERA

Evidentiary Motion Hearing

CR No:	18-3495 JCH	USA vs.	Douglas D. Smith		
Date:	8/25/20	Defendant:	Douglas D. Smith	Interpreter:	n/a
Time In/Out:	10:02 a.m./10:43 a.m.	Total Time:	41 minutes	Hearing in:	remote - via Zoom
Clerk:	V. Loman	Court Reporter:	Paul Baca	Probation Officer:	n/a
AUSA:	Novaline D. Wilson and Kyle T. Nayback	Defendant's Counsel:	Aric G. Elsenheimer		

PROCEEDINGS

10:02 a.m. Court is in session via remote Zoom. The hearing is regarding **Defendant's Motion to Dismiss for Lack of Federal Jurisdiction (ECF No. 47)**. Counsel enter appearances. Defendant present via Zoom at his residence with defense counsel staff, Daniel Berg. Mr. Elsenheimer will submit a waiver of personal presence. Court asks Mr. Smith if he agrees to proceed by video conference. Mr. Smith states his agreement to video presence at the hearing.

10:05 a.m. Ms. Wilson will call GIS technician, Ivan Shije, and realty director, Jesse Gutierrez, for purposes of establishing Indian Country status.

10:06 a.m. Ms. Wilson calls **Ivan Shije**. Mr. Shije sworn. Ms. Wilson begins direct examination.

10:09 a.m. Upon request of Government, and with no objection from defense, the Court takes judicial notice that Santa Clara Pueblo is a federally recognized Indian tribe. Ms. Wilson resumes direct examination. Ms. Wilson asks Mr. Shije about Government Exhibit 2, a map of the Santa Clara Pueblo and Western Winds Motel created by Mr. Shije, and Government's Exhibit 3, a map created by Mr. Shije with a plat overlay of the Santa Clara Pueblo. Ms. Wilson moves the admission of Gov. Ex. 2 and 3. Mr. Elsenheimer has no objection. **The Court admits Gov. Ex. 2 and 3.** Ms. Wilson resumes questioning.

10:17 a.m. Mr. Elsenheimer begins cross examination and asks Mr. Shije questions about Gov. Ex. 2 and 3.

10:23 a.m. Mr. Shije excused. Mr. Nayback calls **Jesse Gutierrez**. Mr. Gutierrez sworn. Mr. Nayback begins direct examination.

10:29 a.m. Mr. Nayback asks Mr. Gutierrez about Gov. Ex. 4, a letter that Mr. Gutierrez drafted regarding the Land Status Report for 826 North Riverside Drive, Western Winds Motel. Mr. Nayback moves the admission of Gov. Ex. 4. Mr. Elsenheimer does not object. **The Court admits Gov. Ex. 4.**

10:31 a.m. Mr. Elsenheimer has no questions of the witness. Mr. Gutierrez is excused. The Government and defense have no additional witnesses.

10:32 a.m. Ms. Wilson presents her argument.

10:35 a.m. Mr. Elsenheimer gives a response argument.

10:41 a.m. Ms. Wilson gives a rebuttal argument.

10:42 a.m. The Court takes the matter under advisement.

10:43 a.m. Court adjourns.